

FILED

AUG 20 2008

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

U.S. BANKRUPTCY COURT
By  DEPUTY

IN RE:	§	BANKRUPTCY CASE NO.
SHANE E. EASTMAN	§	
	§	05-57404 LMC
DEBTOR	§	
	§	CHAPTER 7
SHANE E. EASTMAN	§	
Plaintiff	§	
VS.	§	ADVERSARY CASE NO.
	§	
BAKER RECOVERY SERVICES and	§	08-5055 C
LAW OFFICES OF JUANA TREJO	§	
Defendant	§	

**RESPONSE TO DEFENDANTS' OBJECTION TO DOCUMENT IN SUPPORT OF
DEBTOR'S OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

NOW COMES DEBTOR/PLAINTIFF, SHANE E. EASTMAN ("EASTMAN"), and files this Response to the Objection of the Defendants, BAKER RECOVER SERVICES ("BAKER") and THE LAW OFFICES OF JUANA TREJO ("TREJO") to the Document in Support of Debtor's Opposition to Defendant's Motion for Summary Judgment, and would respectfully show the Court as follows:

1. On May 6, 2008, Plaintiff Eastman filed a Complaint for Contempt, Declarator Judgment and other Relief against the Defendants, Baker and Trejo. The Defendants jointly filed a Motion to Dismiss pursuant to Rule 12(b)(1) & 12(b)(6), FRCP. This Court issued a Notice of Hearing and of Court's Intention to treat the Motion to Dismiss as a Motion for Summary Judgment. The Court invited all parties to supplement pleadings with supporting affidavits and other documents. On July 22, 2008, Plaintiff Eastman filed a copy of the letter sent to Plaintiff's Counsel from Defendant Baker, dated January 8, 2008. It is this document to which Defendant now objects to being considered, and to which Plaintiff files this response.

2. The Objection by Defendant states that consideration of the letter from Baker violates FRCP 408 (believed to actually be Federal Rule of Evidence 408). In this regard, the

Defendant seeks to couch the document as an Offer to Compromise.

3. The "Offer to Compromise" was a request for payment from the Plaintiff to the Defendant in order to dismiss a State Court Judgment that was obtained in violation of the Court's Permanent Discharge Order. In that regard, the letter itself sustains a separate violation of the Discharge Order, provided for in § 524 of the Bankruptcy Code.

4. It is the Offer to Compromise itself that creates one of Plaintiff's causes of action against Defendant, and FRE 408 can not be used as a shield to prevent presentation by the Plaintiff of this violation. See **Stockman v. Oakcrest Dental Ctr., P.C.**, 480 F.3d 791, 797 (6th Cir. 2007). See also **Towerridge, Inc. v. T.A.O., Inc.** 111 F.3d 758, 770 (10th Cir. 1997)(evidence of settlement negotiations from separate action not precluded when offered to prove P acted in bad faith); **U.S. v. Austin**, 54 F.3d 394, 400 (7th Cir. 1995) (evidence of settlement negotiations from separate action not precluded when offered to prove that D was on notice that conduct was wrongful).

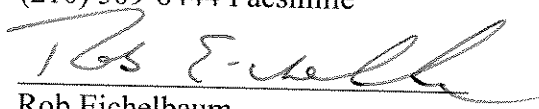
5. In the situation at hand, Plaintiff contends that the Judgment taken by Defendants, Baker and Trejo, violated the Permanent Discharge Order. The letter sent by Defendant, Baker, dated January 8, 2008, seeks payment from Plaintiff on a Judgment that should not have been taken, **and on a debt that has already been discharged**. It is the latter action that creates a separate cause of action for which Plaintiff is entitled to introduce the letter dated January 8, 2008, and for which Defendants may not seek to have the letter excluded under FRE 408.

Wherefore, premises considered, Plaintiff prays that the Court deny the objection of the Defendants concerning the introduction of document, and that this Court consider the letter dated January 8, 2008. Plaintiff prays for other such relief to which he may be entitled.

Respectfully submitted,

EICHELBAUM LAW OFFICE
6100 Bandera Road, Suite 407
San Antonio, Texas 78238
(210) 681-5710 Telephone
(210) 509-6444 Facsimile

By:



Rob Eichelbaum
State Bar No. 24002043

KATZMAN & KATZMAN
12451 Starcrest Drive, Suite 106
San Antonio, Texas 78216-2988
Tel (210) 979-7300
Fax (210) 979-7357

By: /s/ Alex Katzman
Alex Katzman
Texas Bar No. 00786939

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on August 20, 2008, a true and correct copy of the above and foregoing has been sent to R. GLEN AYERS, JR., LANGLEY & BANACK, INC., counsel for BAKER and TREJO, by facsimile to (210) 735-6889.


ROB EICHELBAUM